

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 7 Acquisition Planning

Subject: 7.2 Leases and Rentals

PURPOSE: This standard practice (SP) establishes procedures for the lease of equipment and other personal property.

POLICY: The Laboratory will obtain equipment and other personal property at the lowest cost through a systematic method of evaluation and, under any lease consideration, will perform a lease-versus-purchase analysis. DOE approval will be required for all capital leases.

SCOPE: This SP applies to subcontracts for all leases or rentals of equipment and other personal property.

DEFINITIONS:

Capital Lease Capital equipment is movable personal property with an anticipated service life of two years or more and a cost of \$50,000 or more, which substantially retains its original characteristics. Capital equipment does not include application software, maintenance, repair, warranties, real property and improvements, or related personal property.

Lease For the purposes of this SP, a lease is a subcontract granting use of personal property for a year or more in exchange for a specified compensation.

Lease-to-Ownership (LTO) An LTO is a type of lease-purchase arrangement in which a specific number of payments (from 12 to 60 months), usually of equal size, are made for a specified term, shortly after which title is transferred to the U.S. Government, either automatically or for a nominal fee. An LTO is commonly used by the Laboratory for the acquisition of capital equipment such as telecommunication and computer systems. See SP 7.3, *Lease-To-Ownership*.

Lease-Versus-Purchase Analysis A lease-versus-purchase analysis is the cost analysis used to determine whether the purchase method or lease method is most appropriate using present value factors.

Lessee A lessee is the party (normally the Laboratory) leasing the property from a lessor.

Lessor A lessor is the party who leases the property to a lessee (normally the Laboratory).

Operating Lease An operating lease is a lease that is not a capital lease. See Criteria, below.

Personal Property As used herein, personal property generally means movable items that are not permanently affixed to or considered to be an integral part of the real property. Generally, but with exceptions,

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items remain personal property if they can be removed without serious damage either to the real property or to the items themselves.

Rental

For purposes of this SP, a rental is a subcontract granting use or occupation of property for less than a year in exchange for a specified rent. Generally, a lease-versus-purchase analysis is not required for rentals. Examples of short-term rentals may include personal computers, copying machines, construction equipment, etc.

PROCEDURES:

Justifications

Requests to lease equipment must include the desired term of the lease and a written justification from the requester detailing the reason(s) for leasing. Reasons for leasing may include:

- A need to determine whether the equipment will perform effectively prior to a purchase decision;
- The rapid technological obsolescence of equipment;
- The past history of maintenance problems with similar types of equipment;
- The likelihood that equipment with a needed higher performance-to-cost ratio will be available in the near future;
- The equipment will only be used for a short period of time to take care of an interim situation;
- The likelihood that purchase price reductions will be made by the equipment supplier in the near future; and
- Limited funds in a period when quantum jumps in equipment performance are being made and Laboratory programs can benefit from the use of the equipment.

Types of Leases

Generally, three types of leases are used by the Laboratory. Selection is based on the type that is available from lessors and the type that is in the Laboratory's best interest.

Lease Without Option to Purchase — These leases normally have the lowest periodic payment but do not contain provisions for applying a portion of the lease payment toward the purchase of the equipment.

Lease With Option to Purchase — These leases normally have a higher lease payment but contain provisions for applying

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a portion of the lease payment toward purchase of the equipment.

Lease-to-Ownership — These leases, normally considered capital leases, are often with a third-party financial institution and provide for the installment purchase of equipment after all regular lease payments have been made. Use of LTOs is usually limited to transactions in excess of \$50,000 and requires DOE approval. See SP 7.3, *Lease-to-Ownership*.

Capital Leases

Capital leases require DOE approval. New capital leases for computers and other equipment are required to be fully funded in advance and normally require capital equipment funds. The acquisition of telecommunication systems is considered to be the purchase of a public utility service and is not treated as a capital lease. All questions concerning requirements for funding of capital leases should be referred to Accounting.

Operating Lease Criteria

Operating leases must meet all of the following criteria:

- Ownership of the asset remains with the lessor during the term of the lease and is not transferred to the Laboratory after the end of the lease period;
- All risks of ownership of the asset (e.g., financial responsibility for destruction or loss of the asset) remain with the lessor, unless the Laboratory is at fault for such losses;
- The asset is a general purpose asset rather than for a special purpose of the Laboratory and is not built to unique specification of the Laboratory as lessee;
- There is a private sector market for the asset; and
- The asset (structure) is not constructed on government land.

Leases not meeting all of the above criteria are capital leases and require funding in advance as noted in Capital Leases, above.

Lease-Versus-Purchase Analysis

A lease-versus-purchase analysis must be performed for all proposed leases. The analysis should take into consideration all appropriate economic and other factors including:

- Length of time equipment will be used (entire potential lease term, including any options);
- Leasing costs;

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- Purchase options;
- Cumulative rental costs;
- Cumulative lease credits for purchase options;
- Purchase, transportation, installation, and maintenance costs; and
- Any other collateral costs.

Note: Normally, leases cannot be justified when the total present value of the expected lease payments exceeds the acquisition cost.

See SP 7.3, *Lease-To-Ownership*, for additional instructions for performing a lease versus-purchase analysis.

Lease-Versus-Purchase Determination

A lease-versus-purchase determination that explains the rationale for selection of the acquisition method must be prepared by the procurement specialist before the lease is initially established. Normally, leases cannot be justified when the total present value of the expected lease payments exceeds the acquisition cost. Imminent technological improvements and other pertinent factors may be considered in making the determination.

Determination shall be made at the time of the original acquisition, when lease extension is being considered, and at other times a circumstances warrant.

Lease Provisions

Subcontracts for leasing of equipment or other personal property should include or address the following:

- A description of the items being leased;
- The term and start date of the lease;
- The total allowable expenditures under the lease;
- The frequency of lease payments (the Laboratory normally makes lease payments monthly or quarterly in arrears);
- The amount of lease payments accruing toward purchase and terms of purchase conversion, if any;
- Any fees due the lessor for discontinuance of the lease before its term expires;

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- Whether maintenance will be the responsibility of the lessor or the Laboratory;
- Treatment of California State Sales and Use Tax (see SP 29.2, *California Sales and Use Tax*);
- Responsibility for payment of property tax (see SP 29.3, *California Property Tax*); and
- Liability for the equipment. (The Laboratory normally does not assume liability for loss or damage to the equipment while in the possession of the Laboratory except where the Laboratory is negligent for such loss or damage.)

Extending Rental Subcontracts

To extend a rental beyond one year, the subcontract should be treated as a lease with a lease-versus-purchase analysis performed.

Discontinuing a Lease Before Its Term Expires

The requester must provide a reasonable, written justification for discontinuing a lease before it expires when a fee will be charged to the Laboratory for early discontinuance. Examples of situations that support discontinuing a lease include:

- Termination because the item is no longer required or
- Need for higher technology, capacity, or performance beyond that offered by the leased item.

If a lease will be initiated to replace items currently being leased, the justification must fully discuss the need for the lease and the differences between the discontinued and replacement items.

Conversion of Lease to Purchase

A purchase option may be exercised when a lease-purchase-analysis indicates that it is in the Laboratory's best interest. If the lease is for capital equipment, capital funds must be used to exercise the purchase option.

Disposition of Leased Property

To avoid the loss of any significant purchase option credits under an equipment lease that is to be discontinued, the requester should ensure that the lease is made available to other Laboratory organizations for possible assumption.

REVIEW/ APPROVAL:

DOE

Written DOE approval will be obtained before entering into a capital lease.

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RESPONSIBILITIES:

Requester

The requester shall:

- Provide with the requisition the proposed term of the lease and a written justification detailing the reasons for the lease;
- Justify discontinuing a lease before it expires when a fee will be charged to the Laboratory for early discontinuance; and
- Make leased equipment with significant purchase option credits that is no longer needed available to other Laboratory organizations.

Procurement Specialist

The procurement specialist shall:

- Select the appropriate type of lease;
- Prepare a lease-versus-purchase analysis and determination for new and extended leases, except for lease-to-ownership (see SP 7.3, *Lease-to-Ownership*); and
- Include appropriate lease provisions in all leases.

REFERENCES:

Prime Contract Clause I.114(r) - Contractor Purchasing System